IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5341 OF 2000

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

KIRTI KUMAR M PANDYA
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:
MR SAURABH MEHTA for petitioner

Coram: MR.JUSTICE S.K. Keshote,J
Date of order: 29/09/2000

C.A.V. ORDER

#. The petitioner, a assistant teacher in the services of the respondent - District Panchayat, by this petition under Article 226 of the Constitution of India, is praying for issuance of a Writ of Mandamus or any other appropriate Writ, order or direction, quashing and setting aside the order of suspension dated 21st June, 1988. Further prayer has been made for direction to review and consider the case of the petitioner for

reinstatement in service in pursuance of the Government Resolution dated 15th May 1996. Another prayer has been made for direction to the respondents in the nature of a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction quashing and setting aside the order dated 6.11.99 and further to direct the respondents to pay subsistence allowance to the petitioner in the revised pay scale of Rs.5000-8000. Prayer has been made for grant of interim relief also.

#. The facts of the case in brief are that the petitioner was appointed as assistant teacher on January 1, 1972 in the Falia Primary School run by District Panchayat, Jamnagar. On 12.9.83, a criminal complaint was lodged against the petitioner at Kalawad Police Station being C.R. No.I-127/83 for misappropriation of Rs.38,250/=. After investigation the chargesheet was submitted against the petitioner in criminal court on 31st March, 1984. The petitioner was placed under suspension vide order dated 21st March, 1988 on the ground that criminal case has been filed against him. It is the case of petitioner that on 11.10.96 and 7.11.96, the District Primary Education Officer, Jamnagar, wrote letters to the Government Officers asking consent and permission to review and consider the case of the petitioner for reinstatement in service in pursuance of the Government Resolution dated May 15, 1996. Under the order dated 11.10.99, the petitioner was given benefit of subsistence allowance as per the revised pay scale with effect from 1.1.96. That order came to be cancelled by respondent under the order dated 6.11.99. Hence this special civil application.

#. The learned counsel for the petitioner, relying on the decision of this court in the L.P.A. No.39 of 1997 in S.C.A. No.4170 of 1994 decided on 10.2.98, contended that during the suspension period, if the pay of the employee has been revised, the suspended employee is entitled for subsistence allowance as per the revised pay scale. It has next been contended that the criminal case has been filed in the criminal court in the year 1984 and though more than sixteen years have passed, that case has not been finalized and as such, it is hardly any justification with the respondent to keep the petitioner under suspension. Lastly, it is contended that the order passed by respondent dated 6.11.99 is wholly arbitrary and unjustified as the petitioner has not been given any opportunity of hearing before making of the same. Carrying this contention further, it is contended that the petitioner was entitled for the benefit of the revised pay scale and which has been granted. It could

not have been ordered to be taken back.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. The decision of this court on which reliance has been placed by learned counsel for the petitioner is not of any help to him for the reason that the benefit of the revised pay scale under the Gujarat Civil Services (Revision of Pay) Rules, 1998, are not available to the petitioner. Reference in this respect may have to clause (c) of sub-rule 2, of Rule 7 of the Rules aforesaid. It reads as under:

> "7(2)(c) Where a Government servant is under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay shall be subject to final order on the pending disciplinary proceedings."

#. It is true that the petitioner was not placed under suspension on the ground that some departmental inquiry is pending against him but from these Rules I find that the intention of the Rule making authority is very clear and the suspended employees are not to be given the benefit of the revised pay-scale. The decision of the Division Bench of this Court is based on the Rules of 1987. The learned counsel for the petitioner has not referred the Rules of 1987 nor it is the contention that under those Rules the suspended employees have not been deprived the benefits of the revised pay-scales.

#. So far as the grievance made by petitioner that the order dated 6.11.99 has been passed by respondents without giving an opportunity of hearing to him, it is suffice to say that when the petitioner is not entitled for the benefit of revised pay scale, how this irregularity or illegality committed by respondents in passing of this order will be of any help to him. It is no more res-integra that merely on the ground that principles of natural justice have been violated by the authority in passing of the order, the court will not grant relief to the petitioner unless the court is satisfied that the petitioner has a plausible and reasonable defence in the matter. Here, the Rules aforesaid of the revised pay-scale Rules of 1998 are very clear and specific and the respondents have committed a mistake to grant the benefit of revised pay scale to the

petitioner and under the impugned order, this mistake has been corrected. When the petitioner is not entitled for this benefit, I fail to see what useful purpose will be served or it will be beneficial for the petitioner in case the order is set aside only on the ground that it has been made in violation of principles of natural justice. In case on this ground this order is quashed and set aside it will result in restoration of an illegal order. It is no more res-integra that this court under Article 226 of the Constitution may decline to issue a Writ of Mandamus or Certiorari where the effect of quashing and setting aside of the impugned order would be to restore an illegal order. Reference here fruitfully may be made to the following decisions:

(i) AIR 1966 SC 828
(ii) AIR 1980 RAJ. 1
(iii) AIR 1968 KERALA 76
(iv) AIR 1977 PATNA 166
(v) AIR 1994 RAJ. 53
(vi) AIR 1990 PATNA 165

#. So far as the prayer made for consideration of case of the petitioner for reinstatement is concerned, it is suffice to say that if the Government Resolution contemplates for review of cases of such persons, it is always open to the petitioner to draw the attention of the competent authority to this Resolution and the authority will consider the same and pass appropriate order. For this, this petition is wholly premature.

#. In the result, this special civil application fails and the same is dismissed.

(S.K.Keshote, J.)

(sunil)